

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

XHAIL USA, INC. and XHAIL, INC.,)	
)	
Plaintiffs,)	
)	
v.)	C.A. No. 22-579-CFC
)	
MICHAEL J. KIELY,)	
)	
Defendant.)	

**DECLARATION OF EMILY S. DIBENEDETTO
IN SUPPORT OF MOTION FOR DEFAULT JUDGMENT
PURSUANT TO FED. R. CIV. P. 55(b)(1)**

I, Emily S. DiBenedetto, declare as follows:

1. I am an attorney at the law firm Shaw Keller LLP, counsel in this action for the plaintiffs in the above-captioned matter. I am a member in good standing of the Bar of the State of Delaware. I have personal knowledge of the matters set forth herein. I make this declaration in support of plaintiffs' Motion for Default Judgment Pursuant to Fed. R. Civ. P. 55(b)(1).

2. The Verified Complaint was filed in this action on April 28, 2022.
(D.I. 1).

3. A draft Summons to defendant was filed with this Court on April 28, 2022. (D.I. 5).

4. Service of the Verified Complaint and Summons was made upon the defendant via hand-delivery on May 3, 2022, as shown in the affidavit of service filed with this Court on May 4, 2022. (D.I. 6).

5. As of the filing of this Motion, it has been more than twenty-one (21) days since defendant was served with a Summons and the Verified Complaint. *See* Fed. R. Civ. P. 12(a)(1)(A)(i).

6. As of the filing of this Motion, defendant has not filed an Answer or any other responsive pleading to the Verified Complaint, and plaintiff has not been served with an answer as of the filing of this Motion.

7. On May 26, 2022, a Request for Clerk's Entry of Default was filed pursuant to Fed. R. Civ. P. 55(a). (D.I. 7). This filing included a proposed entry of default (D.I. 7-1) and affidavit of Emily S. DiBenedetto (D.I. 7-2) in support of the entry of default.

8. The Request for Clerk's Entry of Default filing at D.I. 7, including supporting documents (D.I. 7-1, 7-2), were served on May 26, 2022 by first class mail to the defendant's last known address at 2093 Mount Olympus Drive Los Angeles, CA 90046. *See* Fed. R. Civ. P. 5(b)(2)(C). The certificate of mailing is shown at Exhibit A.

9. The defendant is not an infant, incompetent, or in the military service of the United States of America. Defendant has the capacity to be sued. Therefore,

Defendant is in default for failing to appear, plead, or otherwise defend pursuant to the Federal Rules of Civil Procedure. *See* Fed. R. Civ. P. 55.

10. There is now due and owing by the defendant to the plaintiff the sum of \$237,425.99 as of June 2, 2022. This sum certain is calculated based on the documentation of the transactions between the parties. *See* D.I. 1 (Complaint); *infra* ¶¶ 11, 12; *see also* Fed. R. Civ. P. 55(b)(1).

11. Pursuant to the First Loan Agreement (D.I. 1-1), the default sought includes \$175,688.00. This sum is derived from the \$210,000.00 principal amount loaned to the defendant, plus \$7,175.16 in interest, minus \$41,487.16 paid by the defendant in eleven biweekly salary deductions. *See* D.I. 1 at ¶¶ 9, 11, 13-14. Interest was computed at a rate of 3% per annum where compounding began on June 16, 2021, and additional interest will accrue at this rate until the full sum is repaid. *See* D.I. 1 at ¶ 15. The requested interest amount includes the sum of all interest expected under the life of the loan, had it been paid in the 57 biweekly installments according to the contract terms (\$7,175.16). This \$7,175.16 sum consists of \$2,678.78 interest accrued up to November 19, 2021 (last installment payment), plus \$2,800.75 interest accrued between November 19, 2021 and June 2, 2022 (the date of this motion), plus \$1,695.63 expected interest had the loan been paid according to the contract in 57 biweekly installments. *See* D.I. 1 at ¶ 11.

12. Pursuant to the Second Loan Agreement (D.I. 1-2), the default sought further includes \$61,737.99. This sum is derived from the \$60,000.00 principal amount loaned to the defendant, plus \$451.13 interest accrued up to September 16, 2021 (expected repayment date), plus \$1286.86 interest accrued between September 16, 2021 to June 2, 2022 (the date of this motion), minus zero payments made by the defendant. *See* D.I. 1 at ¶¶ 19-21. Interest was computed at a rate of 3% per annum, and additional interest will continue to accrue daily at a rate of 3% per annum until the full sum is repaid. *See* D.I. 1 at ¶ 21.

13. The default judgment sought does not exceed the amount demanded in the pleadings.

14. A copy of a proposed default judgment order is attached and incorporated hereto as Exhibit B.

15. I declare under penalty of perjury under the laws of the United States of America that foregoing is true and correct.

Dated: June 2, 2022

/s/ Emily S. DiBenedetto
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CERTIFICATE OF SERVICE

I, Emily S. DiBenedetto, hereby certify that on June 2, 2022, this document was served on the persons listed below in the manner indicated:

BY EMAIL:

Christian Lindhé
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Dated: June 2, 2022